Filed 1/22/19 In re H.Y. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re H.Y., a Person Coming Under the Juvenile Court Law.	B287427
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. TATIANNA L., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK22637)

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephen Marpet, Juvenile Court Referee. Dismissed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel for Plaintiff and Respondent.

Tatianna L., the mother of dependent child H.Y., appeals the juvenile court's dispositional order on the ground that the juvenile court erroneously found that the Indian Child Welfare Act (25 U.S.C. § 1901 et seq. (ICWA)) was inapplicable. We dismiss the appeal as moot.

FACTUAL AND PROCEDURAL BACKGROUND

On April 26, 2017, the Department of Children and Family Services filed a petition alleging that H.Y., an infant, was subject to the jurisdiction of the juvenile court under Welfare and Institutions Code[1] section 300, subdivision (b)(1). In the detention report filed the same day, DCFS stated that Mother had said that H.Y.'s paternal[2] great grandmother had "Cherokee and Blackfoot blood although they are not tribe members."

The detention hearing was held the same day. The presumed father denied any Native American ancestry both on a Parental Notification of Indian Status form and orally when questioned by the court. On her Parental Notification of Indian Status form, Mother indicated that she may have Indian ancestry with the Blackfoot and Cherokee tribes. Mother provided the maternal grandfather's name and telephone number for further information. Mother orally confirmed to the court that she may have Blackfoot or Cherokee ancestry.

The court questioned the maternal grandfather regarding his ancestry. The maternal grandfather told the court, "I'm not of

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[1] Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

[2] It appears that the report was incorrect and that the child's possible Native American ancestry came through her maternal relatives, not her paternal relatives.

an active tribe. It is actually in—like you say my birth. I don't have any written statements because I did not know we had to bring anything like that." The juvenile court did not clarify what the maternal grandfather meant, or whether he possessed or could obtain documents that might shed light on his ancestry. The maternal grandfather did not know if any of his relatives had been registered with a tribe, and when asked if family members might know more, he responded that most of his family was deceased. He did not remember living on a reservation or having family who lived on a reservation.

The juvenile court then said, "At this time, I'm going to find that it's not an ICWA case, I have no reason to know." The court told the maternal grandfather that it would have DCFS contact him again to "follow-up and see if you might have remembered some guy who is alive, some aunt, some uncle, who might have additional information," in which case the court would address the matter at that point.

The court later declared H.Y. a dependent child of the juvenile court. She was placed in foster care until June 2018, when the court returned her to her mother's custody. In December 2018, the juvenile court gave Mother sole physical and legal custody of H.Y. and terminated dependency jurisdiction.[3]

DISCUSSION

ICWA reflects a congressional determination to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards a state court must follow before removing an Indian

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[3] We take judicial notice of the juvenile court's December 2018 minute orders. (Evid. Code, §§ 452, 459.)

child from his or her family. (25 U.S.C. § 1902; see *In re Isaiah W.* (2016) 1 Cal.5th 1, 7-8.) For purposes of ICWA, an "Indian child" is a child who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. (25 U.S.C. § 1903(4); see § 224.1, subd. (a) [adopting federal definitions].)

As the Supreme Court explained in *In re Isaiah W.*, *supra*, 1 Cal.5th at pages 8 through 9, notice to Indian tribes is central to effectuating ICWA's purpose, enabling a tribe to determine whether the child involved in a dependency proceeding is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the matter. ICWA provides, "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe" of the pending proceedings and its right to intervene. (25 U.S.C. § 1912(a).) Similarly, California law requires notice to the Indian custodian and the Indian child's tribe in accordance with section 224.2, subdivision (a)(5), if DCFS or the court knows or has reason to know that an Indian child is involved in the proceedings. (§ 224.3, subd. (d); see Cal. Rules of Court, rule 5.481(b)(1) [notice is required "[i]f it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480," which includes all dependency cases filed under section 300].) "The Indian status of the child need not be certain to invoke the notice requirement. [Citation.] Because the question of membership rests with each Indian tribe, when the juvenile court knows or has reason to believe the child may be an Indian child, notice must be given to the particular tribe in

question or the Secretary [of the Interior]." (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 471.)

Mother advised the court of her Blackfoot and Cherokee ancestry at the first hearing in these dependency proceedings. The court, therefore, knew or had reason to believe that H.Y. was an Indian child as that term is used in ICWA. While there was no indication that Mother was a registered member of any tribe, and Mother's father confirmed that he was not a registered member of an Indian tribe, "a person need not be a *registered* member of a tribe to be a member of a tribe—parents may be unsure or unknowledgeable of their own status as a member of a tribe." (*In re B.H.* (2015) 241 Cal.App.4th 603, 606-607.) Mother's statement that she had Cherokee ancestry through her father was sufficient to trigger ICWA notice requirements. (*Id.* at p. 607; *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1386-1388; *In re D.C.* (2015) 243 Cal.App.4th 41, 62-63.)

As to Mother's Blackfoot ancestry, further inquiry was required. As the court observed in *In re L.S., Jr.* (2014) 230 Cal.App.4th 1183, at page 1198, "[T]here is frequently confusion between the Blackfeet tribe, which is federally recognized, and the related Blackfoot tribe which is found in Canada and thus not entitled to notice of dependency proceedings. When Blackfoot heritage is claimed, part of the Agency's duty of inquiry is to clarify whether the parent is actually claiming Blackfoot or Blackfeet heritage so that it can discharge its additional duty to notice the relevant tribes." There is no indication in the record that DCFS or the court attempted to clarify Mother's ancestry to determine whether notice to the Blackfeet tribe was appropriate.

Although Mother is correct that DCFS and the court failed to fulfill their duties under ICWA, we cannot provide Mother

with any meaningful relief in this appeal because the juvenile court subsequently awarded legal and physical custody of H.Y. to Mother and terminated juvenile court jurisdiction over H.Y. Mother's claim is therefore moot. (See *In re Pablo D.* (1998) 67 Cal.App.4th 759, 760-761 [appeal is moot when no effective remedy can be fashioned].)

DISPOSITION

The appeal is dismissed as moot.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.